

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES HENRY GREEN,

Plaintiff,

vs.

GREG COX, *et al.*,

Defendants.

3:09-cv-0206-ECR-VPC

ORDER

Plaintiff James Henry Green, has submitted his amended complaint attempting to address the deficiencies noted by the court in its original screening order. The complaint raises a claim for retaliation for plaintiff's grievance activities. Having reviewed the amended complaint, the Court concludes that this claim is sufficient to proceed against defendants Stroud, Dooley, Groover, Liverani, Siever, Henson, and Nevins.¹ Accepting plaintiff's allegations as true, the claim states sufficient facts to show that the disciplinary charges were not brought on actual evidence but on the "perjured" testimony of the charging officers, who has previously been the subject of plaintiff's grievances.

The claim raised as count II, alleging an Eighth Amendment violation for a policy of deliberate indifference shall be dismissed with prejudice, as insufficient to state a claim. The court notes a similar claim was previously dismissed with prejudice. *See* docket # 6).

IT IS THEREFORE ORDERED Count II of the Amended Complaint is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Defendant Groover is reinstated as a defendant in this action.

¹ The Court erroneously dismissed defendant Groover with prejudice in its original screening order after directing plaintiff to amend his complaint as to him and certain other defendants. Defendant Groover shall be reinstated as a defendant in this action.

1 **IT IS FURTHER ORDERED** as follows:

2 1. The Clerk **shall electronically serve a copy of this order, including the attached**
3 **Notice of Intent to Proceed with Mediation form, along with a copy of plaintiff's complaint, on the**
4 **Office of the Attorney General of the State of Nevada, to the attention of Pamela Sharp.**

5 2. The Attorney General's Office shall advise the Court within **twenty-one (21) days**
6 of the date of entry of this order whether it can accept service of process for the named defendants. As
7 to any of the named defendants for which the Attorney General's Office cannot accept service, the Office
8 shall file, *under seal*, the last known address(es) of those defendant(s).

9 3. If service cannot be accepted for any of the named defendant(s), plaintiff shall file a
10 motion identifying the unserved defendant(s), requesting issuance of a summons, and specifying a full
11 name and address for said defendant(s). Plaintiff is reminded that, pursuant to Rule 4(m) of the Federal
12 Rules of Civil Procedure, service must be accomplished within one hundred twenty (120) days of the
13 date the complaint was filed.

14 4. If the Attorney General accepts service of process for any named defendant(s), such
15 defendant(s) shall file and serve an answer or other response to the complaint within **thirty (30) days**
16 following the date of the early inmate mediation. If the court declines to mediate this case, an answer
17 or other response shall be due within **thirty (30) days** following the order declining mediation.

18 5. The parties **SHALL DETACH, COMPLETE, AND FILE** the attached Notice of
19 Intent to Proceed with Mediation form on or before **thirty (30) days** from the date of entry of this order.

20 DATED this 28th day of October, 2010.

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23 UNITED STATES DISTRICT JUDGE
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Name

Prison Number (if applicable)

Address

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____)	Case No. _____
Plaintiff,)	
)	
v.)	NOTICE OF INTENT TO
)	PROCEED WITH MEDIATION
_____)	
)	
_____)	
Defendants.)	
_____)	

This case may be referred to the District of Nevada's early inmate mediation program. The purpose of this notice is to assess the suitability of this case for mediation. Mediation is a process by which the parties meet with an impartial court-appointed mediator in an effort to bring about an expedient resolution that is satisfactory to all parties.

1. Do you wish to proceed to early mediation in this case? ____ Yes ____ No
2. If no, please state the reason(s) you do not wish to proceed with mediation? _____

3. List any and all cases, including the case number, that plaintiff has filed in federal or state court in the last five years and the nature of each case. (Attach additional pages if needed).

1 _____
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3 4. List any and all cases, including the case number, that are currently pending or any pending
4 grievances concerning issues or claims raised in this case. (Attach additional pages if needed).
5 _____
6 _____
7 _____

8 5. Are there any other comments you would like to express to the court about whether this case is
9 suitable for mediation. You may include a brief statement as to why you believe this case is suitable for
10 mediation. (Attach additional pages if needed).
11 _____
12 _____
13 _____

14 This form shall be filed with the Clerk of the Court on or before thirty (30) days from the date
15 of entry of this order.

16 Counsel for defendants: By signing this form you are certifying to the court that you have
17 consulted with a representative of the Nevada Department of Corrections concerning participation in
18 mediation.

19 Dated this ____ day of _____, 2010.

20 _____
21 Signature

22 _____
23 Name of person who prepared or
24 helped prepare this document
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